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Regulatory
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Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-20, 18VAC85-40, 18VAC85-50, 18VAC85-80, 18VAC85-101, 18VAC85-110
Regulation title	Regulations Governing the: Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic Practice of Respiratory Care Practitioners Practice of Physician Assistants Licensure of Occupational Therapists Licensure of Radiologic Technologists and Radiologic Technologists-Limited Licensed Acupuncturists
Action title	Restricted volunteer license
Document preparation date	8/24/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Chapter 881 of the 2006 Acts of the Assembly authorized the Board of Medicine to adopt regulations establishing a *restricted volunteer license* and authorized the adoption of emergency regulations. Emergency regulations setting out the fee for a restricted volunteer license and the continuing education required to renew such a license after the first biennial renewal became effective on September 1, 2006 and must be replaced by August 31, 2007. This proposed action would replace the emergency regulations with the identical language.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- ...*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

The Board was mandated to promulgate regulations for restricted volunteer licenses by Chapter 881 of the 2006 Acts of the Assembly:

§ 54.1-2928.1. Restricted volunteer license.

- A. The Board may issue a restricted volunteer license to a practitioner of the healing arts who:*
- 1. Held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive;*
 - 2. Is practicing within the limits of his license in accordance with provisions of § [54.1-106](#); and*
 - 3. Attests to knowledge of the laws and regulations governing his branch of the healing arts in Virginia.*

B. A person holding a restricted volunteer license under this section shall not be required to complete continuing education for the first renewal of such a license. Subsequent renewals will require continuing education as specified by Board regulation.

C. If a practitioner with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past four years, he shall only practice his profession if a doctor of medicine or osteopathic medicine with an active, unrestricted Virginia license reviews the quality of care rendered by the practitioner with the restricted volunteer license at least every 90 days.

D. Such license may be renewed every two years in accordance with regulations promulgated by the Board.

E. A practitioner holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter, the regulations promulgated under this chapter, and the disciplinary regulations which apply to all such practitioners in Virginia.

F. The application fee and the biennial renewal fee for restricted volunteer license under this section shall be no more than one-half the renewal fee for an inactive license in the same branch of the healing arts.

2. That the Board of Medicine shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the action is compliance with a statutory mandate for the promulgation of regulations to establish a restricted volunteer license under the Board of Medicine for persons to practice without compensation in free clinics. Regulations set out the requirements for applying for such a license, the fees for application and renewal and the hours of continuing education necessary for the second renewal. The goal of the regulation was to establish minimal fees and continuing education requirements to facilitate and encourage practitioners who are retired or taking a break from active practice to obtain such a license and volunteer their services in a free clinic. At the same time, there was concern that practitioners maintain current knowledge and technique as necessary to serve patients in free clinics with the same degree of professionalism and skill as could be expected in other health care settings.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Proposed regulations establish the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. Regulations also establish the continuing education that would be required for the second renewal of a restricted volunteer license at one-half the number of hours that would be required for the renewal of an active license.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) The primary advantage to the public is the creation of a license that a person who is retiring from active practice can obtain in order to practice in a free clinic without compensation. The free clinics requested support for legislation and regulation to authorize such a license, with the hope that a drastically reduced licensure fee and hours of continuing education, more practitioners would be willing to volunteer their services. In so doing, the clinics may have the advantage of skilled practitioners who do not want the pressures of a full-time practice but are still extremely competent and able to use their knowledge and professional abilities to deliver badly-needed health care services to an underserved population. There are no disadvantages to the public; the clinics would continue to be primarily staffed and supervised by fully licensed practitioners who would provide oversight for the volunteers.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other matters of interest.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Since most mailings to the PPG list are handled electronically, there is very little cost</p>
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	involved. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	The entities that are likely to be affected by these amendments would be persons who are retired from active practice and would like to volunteer some hours in a free clinic.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Between September 1, 2006 and October 15, 2006, there were 3 restricted volunteer licenses issued to MD's. There are no small businesses affected.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	Previously, in order to practice, even in a free clinic for no compensation, a practitioner had to maintain an active license and meet all continuing education/credentialing requirements. With these regulations, costs to the affected entities would be drastically reduced. Renewal fees would be approximately ¼ of the active fee, and the costs for obtaining continuing education would be reduced by ½.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

There were no viable options to the adoption of regulations; it was mandated by legislation (HB1487) passed by the 2006 General Assembly. Qualifications for a restricted volunteer license and for practice with such a license were all specified in § 54.1-2928.1 of the Code of Virginia.

The Board had some discretion in setting fees for holding such a license, but the fee was limited by the Code to no more than ½ of the fee for an inactive license. The Board was also required to establish the requirement for continuing education for a practitioner who wishes to continue renewing a restricted volunteer license after one renewal cycle. While patients are being treated at free clinics and there is no compensation allowed for the licensee, the Board determined that some evidence of continuing competency was essential and adopted a requirement equal to half the hours of continuing education for full licensure. There was some concern that half the hours may not be adequate, but a practitioner who has not engaged in active practice for four or more years must have the quality of his care reviewed by a doctor with an active license at least every 90 days. With such oversight in place, the reduced hours of continuing education was deemed reasonable.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published in the Register on June 26, 2006 and sent to the Public Participation Guidelines list with comment requested until July 26, 2006. There was no public comment received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

Since there are families that receive medical care through the free clinics in Virginia, the availability of restricted volunteer licenses may encourage some practitioners to volunteer their service thus increasing the supply of qualified medical personnel in those facilities.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Chapter 20 – Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
22	n/a	Sets fees for applicants and licensees	Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i>
n/a	226	n/a	Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 30 hours, at least 15 of which must be Type 1 activities or courses offered by an accredited organization and no

			<p>more than 15 hours of Type 2 hours that may be selected by the licensee.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p>
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Chapter 40 – Regulations Governing the Practice of Respiratory Care Practitioners

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
35	n/a	Sets fees for applicants and licensees	<p>Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee.</p> <p><i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i></p>
n/a	67	n/a	<p>Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 10 hours of continuing education as approved and documented by a sponsor recognized by the American Association for Respiratory Care (AARC) or in courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit within the last biennium.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for renewal of a full license was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p>

Chapter 50 – Regulations Governing the Practice of Physician Assistants

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
35	n/a	Sets fees for applicants and licensees	Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i>
n/a	61	n/a	Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 50 hours of continuing education during the biennial renewal period with at least 25 hours in Type 1 and no more than 25 hours in Type 2 as acceptable to the National Commission on Certification of Physician Assistants (NCCPA). <i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for renewal of full licensure was reasonable. Renewal as a physician assistant requires evidence of current certification by the National Commission on Certification of Physician Assistants, which requires a total of 100 hours every two years. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i>

Chapter 80 – Regulations Governing the Practice of Occupational Therapists

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
26	n/a	Sets fees for applicants and licensees	Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee. <i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i>
n/a	73	n/a	Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set

			<p>out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than five hours of Type 2.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p>
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Chapter 101 – Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
25	n/a	Sets fees for applicants and licensees	<p>Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee.</p> <p><i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i></p>
n/a	153	n/a	<p>Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 12 hours of Category A continuing education as acceptable to and documented by the ARRT within the last biennium for radiologic technologists. A radiologic technologist-limited must attest to having completed 6 hours of Category A continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices. Hours must be acceptable to and documented by the American Registry of Radiologic Technologists (ARRT) or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting</i></p>

			<p><i>continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p>
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Chapter 110 – Regulations Governing the Practice of Licensed Acupuncturists

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
35	n/a	Sets fees for applicants and licensees	<p>Establishes the fee for an initial application or biennial renewal at one-half the amount of an inactive fee as specified by subsection F of § 54.1-2928.1. A fee for a late renewal is set at 1/3 of the renewal fee.</p> <p><i>The fees for a restricted volunteer license are consistent with the statute and with the Fee Principles for all professions regulated by the Department of Health Professions.</i></p>
n/a	161	n/a	<p>Sets the requirements for application and issuance of a restricted volunteer license consistent with requirements set out in § 54.1-2928.1 by Chapter 881 of the 2006 Acts of the Assembly. Establishes the continuing education requirement for a biennial renewal after the first renewal cycle to be ½ the hours required for full licensure for a total of 20 hours of continuing education acceptable to the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), obtained within the last biennium.</p> <p><i>Subsection B of § 54.1-2928.1 provides that a person can renew a restricted volunteer license once without meeting continuing education requirements. The Board is required to specify the CE requirement for any subsequent renewal and determined that half the number of hours for full licensure was reasonable. Renewal as a licensed acupuncturist requires evidence of current certification by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM), which requires a total of 40 hours every two years. While the licensee is not being compensated for his voluntary practice, he is continuing to engage in his profession in treating patients so continuing education is important in assuring continuing competency.</i></p>